

SENATE BILL NO. 495

INTRODUCED BY F. THOMAS, HALLIGAN, BECK, BERRY, BUTCHER, DEPRATU, DOHERTY, ELLIS,
GLASER, GROSFIELD, JERGSON, LEWIS, MAHLUM, MCGEE, MCNUTT, NELSON, RYAN, SHEA,
TESTER, SLITER, BOHLINGER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SCHOOL FUNDING THROUGH THE USE OF THE
PUBLIC SCHOOL FUND; REVISING THE STRUCTURE OF THE PUBLIC SCHOOL FUND; AUTHORIZING THE
BOARD OF INVESTMENTS TO PURCHASE THE MINERAL PRODUCTION RIGHTS HELD BY THE PUBLIC
SCHOOL FUND; PROVIDING THAT A PORTION OF ROYALTY PAYMENTS ON THE PURCHASED MINERAL
PRODUCTION RIGHTS MUST BE DEPOSITED IN THE GUARANTEE ACCOUNT; LOANING MONEY FROM
THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION FOR THE PURCHASE OF THE MINERAL PRODUCTION RIGHTS; APPROPRIATING THE
LOAN PROCEEDS; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM MINERAL ROYALTY
PROCEEDS; DELETING THE PROHIBITION ON PUBLIC FUND INVESTMENT IN CORPORATE STOCK
CONTINGENT ON THE PASSAGE OF THE CONSTITUTIONAL AMENDMENT ALLOWING INVESTMENT IN
CORPORATE STOCK; AMENDING SECTIONS 17-6-201, 77-2-303, AND 77-2-304, MCA; AND PROVIDING
AN EFFECTIVE DATE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definition. (1) As used in [sections 1 through 3] "distributable
revenue" means 95% of all revenue from the management of school trust lands and the permanent fund,
including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly
in the permanent fund or net unrealized capital gains that remain in the permanent ~~unrealized~~ fund until
realized.

NEW SECTION. Section 2. Permanent fund. (1) The public school fund provided for in Article X,
section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent
corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

NEW SECTION. Section 3. Guarantee account. (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to stabilize the long-term growth of the permanent fund and to maintain a constant and increasing distributable revenue stream. All realized and unrealized capital gains and all distributable revenue must be deposited in the guarantee account. ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2), THE guarantee account must be distributed to school districts as provided by law THROUGH THE BASIC AND PER-ANB ENTITLEMENTS.

(2) AS LONG AS A PORTION OF THE COAL SEVERANCE TAX LOAN AUTHORIZED IN [SECTION 7-8] IS OUTSTANDING, THE DEPARTMENT SHALL ANNUALLY TRANSFER FROM THE GUARANTEE ACCOUNT TO THE GENERAL FUND AN AMOUNT THAT REPRESENTS THE AMOUNT OF INTEREST INCOME THAT WOULD BE EARNED FROM THE INVESTMENT OF THE AMOUNT OF THE LOAN THAT IS OUTSTANDING IN THE PRIOR YEAR.

NEW SECTION. Section 4. Purchase of permanent fund mineral estate. The ~~board of investments~~ DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION may purchase the mineral PRODUCTION rights held by the public school fund established in Article X, section 2, of the Montana constitution for fair market value. If the ~~board of investments~~ DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION purchases mineral PRODUCTION rights, any royalty payments received by the board that are not used to reimburse the COAL SEVERANCE TAX TRUST fund FOR THE LOAN USED FOR purchasing the mineral PRODUCTION rights must be deposited in the guarantee account provided for in [section 3].

SECTION 5. SECTION 17-6-201, MCA, IS AMENDED TO READ:

"17-6-201. Unified investment program -- general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like

1 matters exercises in the conduct of an enterprise of a like character with like aims;

2 (b) diversify the holdings of each fund within the unified investment program to minimize the risk
3 of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do
4 so; and

5 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified
6 investment program.

7 (2) ~~(a)~~ Retirement funds may be invested in common stocks of any corporation.

8 ~~(b) Other public funds may not be invested in private corporate capital stock. "Private corporate~~
9 ~~capital stock" means only the common stock of a corporation.~~

10 (3) (a) This section does not prevent investment in any business activity in Montana, including
11 activities that continue existing jobs or create new jobs in Montana.

12 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds
13 in venture capital companies. Whenever possible, preference should be given to investments in those
14 venture capital companies that demonstrate an interest in making investments in Montana.

15 (c) In discharging its duties, the board shall consider the preservation of purchasing power of
16 capital during periods of high monetary inflation.

17 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a
18 portion of a loan originated by a financial institution is not considered a direct loan.

19 (4) The board has the primary authority to invest state funds. Another agency may not invest
20 state funds unless otherwise provided by law. The board shall direct the investment of state funds in
21 accordance with the laws and constitution of this state. The board has the power to veto investments
22 made under its general supervision.

23 (5) The board shall:

24 (a) assist agencies with public money to determine if, when, and how much surplus cash is
25 available for investment;

26 (b) determine the amount of surplus treasury cash to be invested;

27 (c) determine the type of investment to be made;

28 (d) prepare the claim to pay for the investment; and

29 (e) keep an account of the total of each investment fund and of all the investments belonging to
30 the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund."

SECTION 6. SECTION 77-2-303, MCA, IS AMENDED TO READ:

"77-2-303. Restrictions on land available for sale. (1) ~~Lands~~ Subject to purchase by the department pursuant to [section 4], land that in the judgment of the ~~board~~ department is likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits ~~are~~ is not subject to sale of either the surface land or any of the mineral deposits. However, this subsection does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

(2) (a) There is reserved from sale from all state ~~lands~~ land bordering on navigable lakes, nonnavigable meandered lakes, and navigable streams, that the board considers in the best interests of the state, a strip of land that includes all the land lying between low-water mark and high-water mark and that extends in width landward from the line of high-water mark of the lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of the abutting government lot at its narrowest point is less than 100 feet, then the strip reserved must extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection is subject to the granting of easements the same as other state lands.

(b) Strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may be leased as provided in this title for the leasing of other state lands."

1 **SECTION 7. SECTION 77-2-304, MCA, IS AMENDED TO READ:**

2 **"77-2-304. Mineral reservations in state ~~lands~~ land.** All coal, oil, oil shale, gas, phosphate,
3 sodium, and other mineral deposits in state ~~lands~~ land, except sand, gravel, building stone, and brick clay,
4 which were not reserved by the United States before July 1, 1927, are reserved to the state. ~~All~~ Subject
5 to [section 4], those deposits are reserved from sale except upon a rental and royalty basis as provided
6 by law. A purchaser of state ~~lands~~ land acquires no right, title, or interest in or to any of those deposits.
7 The state also reserves for itself and its lessees the right to enter upon ~~these lands~~ state land to prospect
8 for, develop, mine, and remove ~~those~~ mineral deposits and to occupy and use so much of the surface of
9 the ~~lands~~ land as may be required for all purposes reasonably extending to the exploring for, mining, and
10 removal of the deposits ~~therefrom~~ from the land, but the lessee shall make just payment to the purchaser
11 for all damage done by reason of ~~such~~ entry upon the land and the use and occupancy of the surface
12 ~~thereof~~ of the land."

13
14 **NEW SECTION. SECTION 8. COAL SEVERANCE TAX LOAN -- RATE OF INTEREST -- APPROPRIATION.** (1) THERE
15 IS LOANED APPROPRIATED TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE COAL SEVERANCE
16 TAX PERMANENT FUND AN AMOUNT NOT TO EXCEED \$75 MILLION FOR THE BIENNIUM ENDING JUNE 30, 2003, FOR THE
17 PURPOSE OF PURCHASING MINERAL PRODUCTION RIGHTS AS PROVIDED IN [SECTION 4]. THE DEPARTMENT SHALL DEPOSIT
18 THE APPROPRIATED LOAN PROCEEDS IN THE GUARANTEE ACCOUNT PROVIDED FOR IN [SECTION 3].

19 (2) THE INTEREST TO BE PAID ON THE LOAN AUTHORIZED UNDER SUBSECTION (1) MUST BE AT THE LONG-TERM
20 INVESTMENT RATE. THE INTEREST IS PAYABLE AS OF THE DATE OF THE TRANSFER OF THE LOAN PROCEEDS FROM THE COAL
21 SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT.

22
23 **NEW SECTION. SECTION 9. LOAN AGREEMENT.** (1) IN ORDER TO MAKE THE LOAN AUTHORIZED IN [SECTION
24 7 8], THE BOARD OF INVESTMENTS SHALL ENTER INTO A CONTRACT WITH THE DEPARTMENT OF NATURAL RESOURCES AND
25 CONSERVATION PLEDGING THE PERCENTAGE OF MINERAL ROYALTIES TO THE REPAYMENT OF THE LOAN OVER A PERIOD OF
26 30 YEARS. THE LOAN AGREEMENT MAY NOT REQUIRE A PAYMENT ON THE LOAN UNTIL FISCAL YEAR 2004. IN FISCAL
27 YEARS 2004 AND 2005, 20% OF THE MINERAL ROYALTIES DEPOSITED IN THE GUARANTEE ACCOUNT PROVIDED FOR IN
28 [SECTION 3] MUST BE PLEDGED TO THE LOAN REPAYMENT. IN FISCAL YEARS 2006 THROUGH 2011, NOT LESS THAN
29 25% OF THE MINERAL ROYALTIES DEPOSITED IN THE GUARANTEE ACCOUNT MUST BE PLEDGED TO THE LOAN REPAYMENT,
30 AND IN SUCCEEDING FISCAL YEARS, NOT LESS THAN 34% OF THE MINERAL ROYALTIES DEPOSITED IN THE GUARANTEE

1 ACCOUNT MUST BE PLEDGED TO THE LOAN REPAYMENT UNTIL THE LOAN IS FULLY PAID.

2 (2) THE CONTRACT MUST PROVIDE THAT THE LOAN REPAYMENT PROCEEDS BE DEPOSITED IN THE COAL
3 SEVERANCE TAX PERMANENT FUND. TO THE EXTENT POSSIBLE, THE BOARD OF INVESTMENTS SHALL MAKE THE LOAN FROM
4 THE PORTION OF THE COAL SEVERANCE TAX PERMANENT FUND INVESTED IN THE SHORT-TERM POOL. THE LOAN
5 AUTHORIZED IN [SECTION 7 8] MAY NOT BE MADE UNTIL THE CONTRACT REQUIRED BY THIS SECTION HAS BECOME
6 EFFECTIVE.

7
8 NEW SECTION. Section 10. Codification instruction. (1) [Sections 1 through 3] are intended to
9 be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to
10 [sections 1 through 3].

11 (2) [Section 4] is intended to be codified as an integral part of Title 17, chapter 6, part 3, and the
12 provisions of Title 17, chapter 6, part 3, apply to [section 4].

13
14 NEW SECTION. SECTION 11. THREE-FOURTHS VOTE. BECAUSE [SECTION 8] APPROPRIATES MONEY FROM THE
15 COAL SEVERANCE TAX PERMANENT FUND, ARTICLE IX, SECTION 5, OF THE MONTANA CONSTITUTION REQUIRES A VOTE
16 OF THREE-FOURTHS OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE FOR PASSAGE.

17
18 NEW SECTION. SECTION 12. COORDINATION. IF HOUSE BILL NO. 41 AND [THIS ACT] ARE BOTH PASSED AND
19 APPROVED, THEN THE REFERENCES TO THE STATE EQUALIZATION AID ACCOUNT CONTAINED IN 20-9-343(3) IN [SECTION
20 3] OF HOUSE BILL NO. 41 ARE CHANGED TO REFERENCES TO THE GUARANTEE ACCOUNT PROVIDED FOR IN [SECTION 3 OF
21 THIS ACT].

22
23 NEW SECTION. Section 13. Effective date DATES --coordination. (1) ~~[This act~~ SECTIONS 1
24 THROUGH 4 AND 6 THROUGH 9 11 12 AND THIS SECTION] ~~is~~ ARE effective July 1, 2001.

25 (2) [SECTION 5] IS EFFECTIVE JANUARY 1, 2003, IF SENATE BILL NO. 493 IS APPROVED BY THE ELECTORATE.

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